

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRANSCRIPT OF PROCEEDINGS - HEARING
BEFORE THE HONORABLE JUDGE EDMOND E. CHANG

12 || APPEARANCES

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09:09:01 1 THE COURTROOM DEPUTY: 14 CR 447, USA versus Hakeem
09:09:12 2 El Bey.

09:17:35 3 MS. MALIZIA: Good morning, Your Honor. Kathryn
09:17:37 4 Malizia and Christopher Hotaling on behalf of the United
09:17:45 5 States.

09:17:45 6 MR. HOTALING: Good morning, Your Honor.

09:17:48 7 MR. FUENTES: Good morning, Judge. Gabe Fuentes
09:17:50 8 here as a member of the trial bar responding to the Court's
09:17:53 9 order.

09:17:53 10 THE COURT: Introduce yourself please.

09:17:55 11 DEFENDANT BEY: Yes, good morning. My name is Bey,
09:17:58 12 comma, Hakeem El, doing business as, Hakeem El Bey.

09:18:03 13 THE COURT: Shall I address you as Mr. Bey or Mr. El
09:18:08 14 Bey?

09:18:08 15 DEFENDANT BEY: Mr. Bey.

09:18:11 16 PRE-TRIAL SERVICES OFFICER: Victor Alvarez from
09:18:14 17 Pre-Trial Services.

09:18:14 18 THE COURT: Good morning to you as well.

09:18:15 19 Do we have the appellate attorney on the phone?

09:18:20 20 THE COURTROOM DEPUTY: I'm sorry, Judge.

09:18:22 21 THE COURT: Let's dial her in.

09:18:26 22 (Whereupon, a phone call was placed in open court.)

09:18:50 23 While we are waiting for her, Mr. El Bey -- sorry,

09:18:54 24 Mr. Bey, did you receive a copy of the motion that

09:18:57 25 Ms. Christiansen filed?

09:18:59 1 DEFENDANT BEY: Oh, yeah, yeah.

09:19:00 2 THE COURT: Okay.

09:19:02 3 MS. CHRISTIANSEN: Hello.

09:19:03 4 THE COURT: Ms. Christiansen, this is Judge Chang.

09:19:06 5 Could you state your appearance for the record, please.

09:19:06 6 MS. CHRISTIANSEN: Johanna Christiansen with the

09:19:09 7 Federal Defender's Office, I guess appearing for Mr. El Bey at

09:19:11 8 this point.

09:19:11 9 THE COURT: Right.

09:19:12 10 And Mr. Bey is here, the AUSA's are here, we have

09:19:17 11 Mr. Fuentes from the trial bar and a representative from

09:19:22 12 Pre-Trial Services as well.

09:19:23 13 MS. CHRISTIANSEN: Okay.

09:19:25 14 THE COURT: So let's take care of this part first.

09:19:27 15 Ms. Christensen has moved to withdraw as the attorney because

09:19:30 16 she represented you in the appeal, which is what the Seventh

09:19:35 17 Circuit Court of Appeals appointed her for.

09:19:37 18 Do you have any objection to her withdrawing her

09:19:40 19 appearance?

09:19:40 20 DEFENDANT BEY: None at all.

09:19:41 21 THE COURT: Okay, Ms. Christensen, thank you for

09:19:45 22 appearing telephonically.

09:19:47 23 MS. CHRISTIANSEN: Sure.

09:19:49 24 THE COURT: Your motion is granted and I am sure the

09:19:51 25 Seventh Circuit appreciates your service as always.

09:19:54 1 MS. CHRISTIANSEN: Thank you, Judge.

09:19:55 2 THE COURT: If you don't mind, we will drop you from

09:19:58 3 the hearing.

09:19:59 4 MS. CHRISTIANSEN: That is fine.

09:20:00 5 Thank you.

09:20:00 6 THE COURT: Okay.

09:20:04 7 So then I am going to ask the government a question

09:20:07 8 first, and then we can try to take care of the other issues

09:20:10 9 going forward:

09:20:11 10 Are you still moving forward with the prosecution?

09:20:13 11 MS. MALIZIA: Yes, Your Honor.

09:20:15 12 THE COURT: And then can I ask, the forfeited

09:20:17 13 properties, what has happened to the house and the car?

09:20:21 14 MS. MALIZIA: It is my understanding that they have

09:20:23 15 been forfeited pursuant to the order of the Court below, and

09:20:27 16 they are in our -- they are in the government's possession.

09:20:30 17 They haven't been auctioned, they haven't been resold. I

09:20:35 18 believe IRS still has custody of both the house and the cars.

09:20:39 19 THE COURT: Okay.

09:20:40 20 So please do insure that they are not auctioned off

09:20:45 21 during the pendency of the prosecution because with the

09:20:49 22 vacature, the fact that the conviction was vacated, with the

09:20:54 23 vacature of the conviction, there really is no forfeiture of

09:20:58 24 the properties at this point.

09:20:59 25 MS. MALIZIA: Correct.

09:21:00 1 THE COURT: Okay.

09:21:07 2 Make sure the IRS puts a hold on that.

09:21:10 3 Then the next question is, Mr. Bey, given that the

09:21:14 4 government does want to move forward, do you want me to

09:21:19 5 appoint a lawyer for you or not?

09:21:24 6 DEFENDANT BEY: No.

09:21:25 7 THE COURT: All right.

09:21:26 8 I understand that you represented yourself during the

09:21:31 9 first trial and proceeding. And Mr. Fuentes here was good

09:21:36 10 enough to be the standby counsel, although I think there might

09:21:41 11 have been a different label used at a different time, a good

09:21:45 12 label rather than a bad label, something like amicus.

09:21:51 13 But in any event, if you want to represent yourself

09:21:53 14 again, and it sounds like you do, right?

09:21:55 15 DEFENDANT BEY: I do, Your Honor.

09:21:56 16 THE COURT: Okay.

09:21:59 17 Then let me make sure -- I will go through again what

09:22:02 18 we call a colloquy, it's just a question and answer, where I

09:22:05 19 want to satisfy myself, as the previous judge did, that you

09:22:09 20 should represent yourself, and I say should in the sense that

09:22:16 21 of course defendants do generally have a right to represent

09:22:19 22 themselves, but I have to make sure you have certain warnings,

09:22:22 23 and that I think that you can at least somewhat competently

09:22:26 24 represent yourself.

09:22:27 25 Okay?

09:22:28 1 DEFENDANT BEY: Yes, sir.

09:22:29 2 THE COURT: So this will be familiar to you because I
09:22:32 3 assume you did this the first time, but let's just go through
09:22:36 4 it again.

09:22:37 5 DEFENDANT BEY: Yes.

09:22:37 6 Okay, okay.

09:22:38 7 THE COURT: Number one, I do need to warn you, it is
09:22:42 8 normally very, very unwise for a nonlawyer to represent him or
09:22:46 9 herself. You don't typically know the statutory law and the
09:22:57 10 rules, like the rules of criminal procedure, the Rules of
09:23:02 11 Evidence, as well as case law, like the decisions of courts,
09:23:09 12 and it is often very difficult for a nonlawyer to even
09:23:12 13 research through those, okay? As good as some online services
09:23:20 14 are, if you don't have access to some of the legal tools that
09:23:26 15 some of the lawyers have access to, you are at a really
09:23:29 16 serious disadvantage.

09:23:31 17 So do you first understand how difficult it is for
09:23:36 18 nonlawyers to even access and find out the law?

09:23:42 19 DEFENDANT BEY: Yes.

09:23:42 20 THE COURT: You understand that?

09:23:44 21 DEFENDANT BEY: I understand.

09:23:44 22 THE COURT: I read your trial transcript, so I think
09:23:47 23 you might have experienced some of that during the trial
09:23:50 24 itself when you were trying to get exhibits into evidence, for
09:23:57 25 example.

09:23:57 1 So even having gone through that first trial and the
09:24:01 2 difficulties there, Mr. Bey, you still would want to represent
09:24:04 3 yourself?

09:24:04 4 DEFENDANT BEY: Oh, yes, sir.

09:24:06 5 THE COURT: And I am just making a record, I'm not
09:24:09 6 doubting you wanting to do this, I just have to make sure I
09:24:12 7 have a complete record.

09:24:14 8 DEFENDANT BEY: Okay.

09:24:14 9 THE COURT: So besides just researching the law and
09:24:17 10 finding out what the law is, there is also strategy decisions
09:24:21 11 that lawyers are better at because they have experience with
09:24:26 12 the legal system. And so that is another disadvantage that
09:24:32 13 nonlawyers suffer under. Like you don't have the strategy.
09:24:39 14 Even if you know the law, do you know what strategy to use
09:24:43 15 during a trial or to defend a case.

09:24:46 16 So do you understand that strategy is also another
09:24:48 17 disadvantage that you are going to be suffering under?

09:24:51 18 DEFENDANT BEY: Um, yes. I had 28 months to
09:24:57 19 strategize and remember what I went through.

09:25:07 20 THE COURT: What is your education level, Mr. Bey?

09:25:10 21 DEFENDANT BEY: I did not get my degree. I'm just
09:25:12 22 about 13 hours from my bachelor's.

09:25:15 23 THE COURT: So obviously you have a high school
09:25:17 24 degree?

09:25:19 25 DEFENDANT BEY: Yes. Oh, yes.

09:25:22 1 THE COURT: And you got that here in the Chicago
09:25:22 2 area?

09:25:26 3 DEFENDANT BEY: I did.

09:25:26 4 THE COURT: Okay. You say you're about 13 hours --

09:25:29 5 DEFENDANT BEY: From my bachelor's. I was going to
09:25:30 6 be an engineer, but the postal service called me for my
09:25:35 7 services so I never finished. And I have been with them for
09:25:38 8 34 years.

09:25:40 9 THE COURT: So then you obviously held down
09:25:43 10 employment a long time at the postal service.

09:25:46 11 DEFENDANT BEY: Yes, sir.

09:25:47 12 THE COURT: And I ask that because being able to hold
09:25:49 13 down a job for is some indication of intelligence.

09:25:53 14 DEFENDANT BEY: Yes.

09:25:54 15 THE COURT: And so you were there for over three
09:25:56 16 decades?

09:25:58 17 DEFENDANT BEY: Yes, sir.

09:25:58 18 THE COURT: And that was a full-time job?

09:26:01 19 DEFENDANT BEY: Yes, sir.

09:26:03 20 THE COURT: All right.

09:26:05 21 Part of this colloquy too is just to get an
09:26:09 22 understanding, again, of what the maximum penalties are in a
09:26:13 23 case.

09:26:14 24 So why don't I ask the government to say what its
09:26:18 25 position would be in terms of what are the maximum penalties

09:26:23 1 that Mr. Bey would face?

09:26:27 2 MS. MALIZIA: Your Honor, off the top of my head, I
09:26:29 3 believe that the maximum penalty per count of the indictment
09:26:31 4 was 20 years. There was no mandatory minimum.

09:26:38 5 And --

09:26:39 6 THE COURT: So on the mail fraud count.

09:26:42 7 MS. MALIZIA: And supervised release term of up to --

09:26:46 8 MR. HOTALING: 3 years.

09:26:47 9 MS. MALIZIA: 3 years.

09:26:48 10 And a maximum fine of to \$250,000 per count.

09:27:00 11 THE COURT: Mr. Bey, you understand what's at stake.

09:27:01 12 Obviously you served a 28-month imprisonment sentence.

09:27:06 13 DEFENDANT BEY: I did.

09:27:07 14 THE COURT: But the maximum penalties for the crimes
09:27:09 15 you were charged with, the mail fraud counts, which I think
09:27:11 16 there were --

09:27:14 17 DEFENDANT BEY: Two.

09:27:15 18 THE COURT: Two.

09:27:16 19 MS. MALIZIA: (Continuing) -- two of those, and four
09:27:18 20 false claims counts, Your Honor.

09:27:20 21 THE COURT: Right.

09:27:20 22 So two mail fraud counts and those have 20-year
09:27:25 23 maximum terms of imprisonment, supervised release of up to 3
09:27:29 24 years, and a fine of either \$250,000 or twice the gain or
09:27:35 25 twice the loss, and then restitution would be required as

09:27:38 1 well. And in theory, those can be stacked on top of each
09:27:42 2 other, so this is like 20 years plus 20 years.

09:27:45 3 And then there were it looks like 6 false claim
09:27:55 4 counts, under 18 U.S.C. 287 and the maximum penalties for
09:28:01 5 287 -- yes, it is five years' imprisonment, and same thing
09:28:04 6 with the supervised release term of three years, and same
09:28:10 7 potential fine and restitution as well.

09:28:13 8 So you understand those are the maximum penalties
09:28:16 9 that you would face?

09:28:17 10 DEFENDANT BEY: Yes, sir.

09:28:18 11 THE COURT: Now, the other thing I want to make sure
09:28:21 12 you understand, because of the situation that your convictions
09:28:25 13 were reversed on appeal and they have come back.

09:28:28 14 It is generally true that after a new trial is
09:28:31 15 ordered, if a sentence -- and if you were to be convicted
09:28:35 16 again, if a sentence is greater after a new trial than -- and
09:28:44 17 after an appeal, than what was imposed a first time, there is
09:28:48 18 a doctrine in the law called judicial vindictiveness. It is a
09:28:54 19 pretty strict name there, but what it means is that there is a
09:28:58 20 presumption, in other words, the Court of Appeals from that
09:29:03 21 point on presumed that the sentence should not be higher than
09:29:09 22 what was received the first time. Okay. That's the general
09:29:10 23 principle. However, there are exceptions to that general
09:29:12 24 principle.

09:29:14 25 And as I said, it is just a general principle, and

09:29:17 1 one exception arguably is if it is a new judge, and obviously
09:29:23 2 it is a different judge the second time around.

09:29:25 3 So I do want to make sure you understand that whether
09:29:29 4 it is because I am a different Judge from the first one or if
09:29:34 5 there have been events after your first sentencing, and I
09:29:38 6 don't know if there have been, but the point is, I want to
09:29:42 7 make sure you understand that you might face, you might get, a
09:29:48 8 higher sentence if you are convicted again.

09:29:51 9 Do you understand that?

09:29:54 10 DEFENDANT BEY: I do.

09:30:04 11 THE COURT: All right.

09:30:05 12 So understanding all these risks, do you still want
09:30:08 13 to represent yourself?

09:30:09 14 DEFENDANT BEY: I do.

09:30:10 15 THE COURT: Does the government want to add anything
09:30:12 16 as to the colloquy?

09:30:13 17 MR. HOTALING: Judge, the only thing I would again
09:30:15 18 mention, and I think you might have touched on this, but
09:30:19 19 again, that the same principles apply to lawyers. The rules
09:30:21 20 of evidence apply, rules of criminal procedure apply. I know
09:30:21 21 that you had asked about whether or not he had general
09:30:23 22 awareness, but again, making sure he understands that those
09:30:27 23 principles will apply to whatever trial will happen in the
09:30:30 24 future.

09:30:30 25 THE COURT: Yes, that is fair.

09:30:35 1 Mr. Bey, just like the first time around, even though
09:30:41 2 you are representing yourself, you would be required to follow
09:30:43 3 all of the statutes, all of the rules, all of the case law
09:30:47 4 decisions that a lawyer would be required to as well. Do you
09:30:50 5 understand that?

09:30:51 6 DEFENDANT BEY: Yes, sir.

09:30:58 7 THE COURT: All right.

09:30:59 8 I do think then that Mr. Bey ought to be permitted to
09:31:04 9 exercise his right to represent himself.

09:31:07 10 Looking over the docket, it looks like you tried to
09:31:10 11 file motions in advance of the trial, in other words, motions
09:31:14 12 in limine, even if the labels were maybe unorthodox. He has
09:31:20 13 now been through an entire trial, so in some sense you have a
09:31:23 14 better grasp of what a trial is like than a lot of nonlawyers
09:31:30 15 would, and certainly more than you did the first time around.
09:31:36 16 And the previously assigned judge did try to explain jury
09:31:41 17 selection, for example, and the other phases of the trial. I
09:31:46 18 think he might have explained cross examination a little bit
09:31:50 19 after you started the first one.

09:31:55 20 But Mr. Bey has been through a trial already, he
09:31:59 21 obviously is not shy about asserting his rights. When I read
09:32:06 22 through the trial transcript, he objected to a late witness
09:32:09 23 disclosure. He elicited on cross a couple of points from the
09:32:13 24 IRS agent on how likely it would be for the IRS to make a
09:32:19 25 mistake and issue refunds in those amounts.

09:32:23 1 So while I think my general warning remains true that
09:32:28 2 it is much, much harder for a nonlawyer to represent himself,
09:32:38 3 in this instance I do find Mr. Bey competent to represent
09:32:42 4 himself.

09:32:42 5 Okay. So now we have that in the books.

09:32:45 6 The next question is obviously the previously
09:32:49 7 assigned judge had requested Mr. Fuentes to help out by being
09:32:55 8 standby counsel.

09:32:55 9 What is your position on -- and of course I will ask
09:32:59 10 Mr. Fuentes his position as well, but what is your position as
09:33:03 11 to whether there ought to be a standby counsel?

09:33:07 12 DEFENDANT BEY: I -- I don't really need one, but if
09:33:10 13 I had to have one, I would want this young man beside me.

09:33:15 14 THE COURT: All right.

09:33:24 15 I appreciate your -- you say you don't really need
09:33:29 16 one, and having reviewed the trial transcript, I do think you
09:33:32 17 would benefit from one, and this is the kind of situation
09:33:38 18 where I can override your decision. Obviously as long as all
09:33:44 19 the other circumstances point one way, I can't override your
09:33:47 20 decision to represent yourself, but I can have a standby
09:33:55 21 counsel ready to assist.

09:33:56 22 I do think things would work differently this second
09:34:03 23 time around. I would allow standby counsel to sit at counsel
09:34:07 24 table, and hopefully there wouldn't be as much, let's say,
09:34:12 25 tension at side bars, he would have to stand there so he could

09:34:16 1 listen and advise you, but the thing is, he would be an
09:34:22 2 available resource for you.

09:34:22 3 Also, I think standby counsel might be able to help
09:34:25 4 with exhibits more, because I think you really struggled with
09:34:29 5 exhibits last time.

09:34:31 6 So I am going to recruit a standby counsel for you.

09:34:35 7 But now the moment of truth:

09:34:38 8 Mr. Fuentes, and it is up to you, because you have
09:34:41 9 provided, and your firm too, has provided an enormous service
09:34:48 10 to the Court, in many pro bono matters, including this one, of
09:34:53 11 course.

09:34:53 12 So please, with a clean conscious, answer however you
09:34:57 13 like. Will you serve as standby counsel in this case?

09:35:01 14 MR. FUENTES: Judge, I think -- as I interpret the
09:35:06 15 Court's remarks as recruiting someone, the Court would like me
09:35:10 16 and our firm to do this again, serve as standby counsel. And
09:35:14 17 I would like, if I could, to take it under advisement and
09:35:18 18 speak with my partners and management about whether the firm
09:35:21 19 wants me to do that, whether I want to do it.

09:35:25 20 If the Court please.

09:35:27 21 THE COURT: Okay. I think that is reasonable, don't
09:35:30 22 you think, Mr. Bey?

09:35:31 23 DEFENDANT BEY: Yes, sir.

09:35:32 24 THE COURT: Give him some time and his law firm to
09:35:36 25 think about it.

09:35:36 1 DEFENDANT BEY: Okay.

09:35:36 2 THE COURT: And I will set a schedule to accommodate
09:35:40 3 that, to accommodate that in a moment.

09:35:47 4 I think the next thing we should address is the
09:35:50 5 pre-trial release conditions.

09:35:52 6 You remember the first time around, obviously for
09:35:59 7 most of the prosecution you were on pre-trial release.

09:36:00 8 And those conditions -- let's see, let me just make
09:36:05 9 sure here, we should go through them again. And I am just
09:36:24 10 going to look up the old order.

09:36:34 11 THE COURTROOM DEPUTY: Judge, did you find it? It is
09:36:37 12 document Number 9.

09:36:39 13 THE COURT: Okay. Thank you.

09:36:44 14 Now, I will go over these in a moment, but Mr. Bey,
09:36:47 15 do you have any -- and maybe you don't remember them, but do
09:36:51 16 you have any objections to them?

09:36:55 17 DEFENDANT BEY: You mean the way that my pre-trial
09:36:58 18 was set up last time?

09:37:00 19 THE COURT: Yes.

09:37:00 20 DEFENDANT BEY: No, I didn't have any objection to
09:37:02 21 it.

09:37:02 22 THE COURT: Let me go through them and you can object
09:37:05 23 if you have a problem with it.

09:37:07 24 Does the government have any other conditions other
09:37:10 25 than the ones that have been proposed before?

09:37:12 1 MS. MALIZIA: No, Your Honor.

09:37:14 2 THE COURT: All right.

09:37:15 3 So let me go through these and then, Mr. Bey, you can

09:37:19 4 raise your hand if you think you have a problem with one of

09:37:22 5 these.

09:37:22 6 All right?

09:37:22 7 DEFENDANT BEY: Okay.

09:37:23 8 THE COURT: And they can be found on the docket at

09:37:26 9 entry Number 9, as Ms. Brooks pointed out.

09:37:30 10 First, you may not violate any federal, state, or

09:37:33 11 local law while on release.

09:37:36 12 You must cooperate in the collection of a DNA sample

09:37:44 13 if it's authorized by law. That might have already been done.

09:37:44 14 You have to advise the Court or the pre-trial

09:37:44 15 services office --

09:37:45 16 Will you be the supervising officer?

09:37:48 17 PRE-TRIAL SERVICES OFFICER: I am not sure right now.

09:37:50 18 THE COURT: So you are just representing the office

09:37:52 19 for now.

09:37:52 20 PRE-TRIAL SERVICES OFFICER: Correct.

09:37:53 21 THE COURT: Okay.

09:37:55 22 So pre-trial will tell you who your supervising

09:37:57 23 officer is, all right? But you have to advise that Pre-Trial

09:38:02 24 Services officer in writing before making any change of

09:38:05 25 residence or telephone number.

09:38:07 1 And where are you at now? Where are you living at
09:38:10 2 now?
09:38:11 3 DEFENDANT BEY: In South Holland.
09:38:12 4 THE COURT: In South Holland?
09:38:14 5 DEFENDANT BEY: Yes, sir.
09:38:14 6 THE COURT: Are you living with a family member?
09:38:17 7 DEFENDANT BEY: Yes.
09:38:17 8 THE COURT: Who is that?
09:38:18 9 DEFENDANT BEY: My sister.
09:38:20 10 THE COURT: Okay.
09:38:24 11 Is pre-trial aware of that, the address?
09:38:27 12 PRE-TRIAL SERVICES OFFICER: We had some knowledge of
09:38:29 13 it, Your Honor.
09:38:30 14 THE COURT: When this hearing ends today, before you
09:38:34 15 leave, just in the hallway, tell pre-trial exactly the address
09:38:38 16 and telephone number, all right?
09:38:40 17 DEFENDANT BEY: It is no problem.
09:38:41 18 THE COURT: Okay.
09:38:42 19 You have to appear in court as required. And if you
09:38:44 20 are convicted again, and if you are sentenced again, you do
09:38:48 21 have to surrender as directed to serve any sentence that is
09:38:52 22 imposed.
09:38:53 23 You have to appear at the next status hearing, which
09:38:57 24 I will set in a minute.
09:38:59 25 You already signed an appearance bond the first time,

09:39:02 1 and so we will reinstate that. That appearance bond, let's
09:39:08 2 see, how much was that for? Probably \$4500.

09:39:12 3 THE COURTROOM DEPUTY: Yes.

09:39:17 4 THE COURT: Yes, it was \$4500, which means you don't
09:39:20 5 have to put up any property, but if you don't follow the
09:39:24 6 conditions of release, then you could end up owing the
09:39:27 7 government \$4500.

09:39:28 8 Do you understand that?

09:39:29 9 DEFENDANT BEY: Yes, sir.

09:39:30 10 THE COURT: Next, you do have to submit to the
09:39:33 11 supervision and report for supervision to Pre-Trial Services
09:39:33 12 as directed.

09:39:36 13 You must not obtain a passport or other international
09:39:42 14 travel document --

09:39:42 15 Do you have a passport?

09:39:44 16 DEFENDANT BEY: I don't.

09:39:45 17 THE COURT: You have to stay within the Northern
09:39:48 18 District of Illinois, that is basically the northern third of
09:39:53 19 Illinois, and Pre-Trial Services can give you a map of all the
09:39:56 20 counties if you need one.

09:39:57 21 You can't possess a firearm, destructive device or
09:40:02 22 other weapon.

09:40:02 23 Is there a firearm at the residence?

09:40:04 24 DEFENDANT BEY: No.

09:40:05 25 THE COURT: You must not use alcohol excessively.

09:40:09 1 You must not use or unlawfully possess a narcotic,
09:40:12 2 drug, or other controlled substance unless prescribed by a
09:40:16 3 licensed medical practitioner.

09:40:19 4 So that is it.

09:40:20 5 Do you have any objections to those, Mr. Bey?

09:40:22 6 DEFENDANT BEY: None at all.

09:40:24 7 THE COURT: I will reinstate that. You don't have to
09:40:27 8 resign the order. The pre-trial release conditions are
09:40:32 9 reinstated.

09:40:34 10 My next question is: Do you still have all the
09:40:38 11 discovery and paperwork and all of that you had in the case?
09:40:41 12 Or is that gone?

09:40:42 13 DEFENDANT BEY: No, no.

09:40:44 14 I don't have it.

09:40:45 15 THE COURT: Okay.

09:40:46 16 So I would like the government to reproduce all of
09:40:49 17 the discovery in the case. And you know what might be
09:40:57 18 helpful, is also -- and I assume you had this for the appeal,
09:41:00 19 is also all the trial exhibits --

09:41:05 20 MS. MALIZIA: Yes, Your Honor.

09:41:06 21 THE COURT: Then Mr. Bey will have those as well.

09:41:14 22 Let's see, is it easier for you to get them in paper
09:41:18 23 or electronic, like on a thumb drive?

09:41:22 24 DEFENDANT BEY: I would prefer paper, then I can see
09:41:26 25 it and read it and take my time to get a thorough

09:41:29 1 understanding.

09:41:30 2 THE COURT: Okay.

09:41:31 3 It is a paper version for now.

09:41:36 4 If -- actually, when recruited counsel is on the
09:41:40 5 case, whether it is Mr. Fuentes or someone else, I will ask
09:41:46 6 you to produce it electronically as well to the standby
09:41:50 7 counsel.

09:41:50 8 MS. MALIZIA: We will produce it in both formats.

09:41:55 9 THE COURT: Okay.

09:41:56 10 And when can you get that done?

09:41:58 11 MS. MALIZIA: Your Honor, I would think within the
09:42:00 12 next week.

09:42:01 13 THE COURT: February -- we will just say February 8th
09:42:04 14 to reproduce in paper form the discovery and trial exhibits.

09:42:11 15 Mr. Fuentes, do you still have the discovery in
09:42:16 16 electronic form?

09:42:19 17 MR. FUENTES: I think we probably do, Judge, but I
09:42:19 18 have not looked into it or asked anyone.

09:42:21 19 THE COURT: How long do you think you need to make a
09:42:23 20 decision?

09:42:25 21 MR. FUENTES: Not very long, Judge. Between now and
09:42:26 22 the next status, or sooner if the Court would like.

09:42:30 23 THE COURT: I think what I was going to shoot for was
09:42:33 24 the week of February 12th, status. Is that enough time?

09:42:36 25 MR. FUENTES: Plenty of time.

09:42:38 1 THE COURT: So let's set a status for the week of
09:42:41 2 February 12th.

09:42:42 3 DEFENDANT BEY: A status hearing for February 12th?

09:42:44 4 THE COURT: We will give you a date and time and tell
09:42:48 5 us if it works or not.

09:42:49 6 THE COURTROOM DEPUTY: February 13th at 10:45.

09:42:52 7 DEFENDANT BEY: What day is that on?

09:42:54 8 THE COURTROOM DEPUTY: That is a Wednesday.

09:42:55 9 MR. HOTALING: February 13th is a Tuesday.

09:42:57 10 THE COURTROOM DEPUTY: I'm sorry, a Tuesday, at
09:43:01 11 10:45.

09:43:01 12 DEFENDANT BEY: That is good.

09:43:02 13 THE COURT: Okay.

09:43:03 14 Now do you, Mr. Bey, have any objection to excluding
09:43:07 15 time under the Speedy Trial Act? And what that means, and I
09:43:10 16 don't know if you remember this from the first time around,
09:43:15 17 but there is a law that says ordinarily from the date of the
09:43:19 18 arraignment, which is the first appearance after the
09:43:22 19 indictment, but since this is after the appeal, the trial
09:43:25 20 would normally have to start within 70 days.

09:43:27 21 DEFENDANT BEY: That is fine.

09:43:28 22 THE COURT: Let me just finish explaining the law.

09:43:31 23 DEFENDANT BEY: Okay.

09:43:32 24 THE COURT: But that 70-day clock can -- without
09:43:37 25 using legalese, you can stop the clock, all right, for reasons

09:43:42 1 like getting discovery to you again so that you can look at it
09:43:48 2 again, and trial preparation, and so on.

09:43:53 3 So when I say that time is excluded from that 70-day
09:43:58 4 clock, I mean we will not let time tick off of that 70 days.
09:44:03 5 And you can object if you want the clock to start ticking.

09:44:07 6 So I guess the first question is, do you object to
09:44:10 7 stopping the clock until the February 13th date?

09:44:13 8 DEFENDANT BEY: No.

09:44:14 9 THE COURT: Okay.

09:44:15 10 So we will exclude time through February 13th to
09:44:18 11 allow the discovery to be reproduced to you, and you can start
09:44:22 12 looking at it again.

09:44:23 13 DEFENDANT BEY: Okay.

09:44:23 14 THE COURT: Now on February 13th, what I would
09:44:26 15 anticipate is -- and it would help, I suppose, if you could
09:44:30 16 file, Mr. Fuentes, on the docket, whenever you have decided,
09:44:34 17 in advance of the 13th, whether it is a yes or no, okay?
09:44:39 18 Because if it is a no, I think I will try to get some other
09:44:43 19 attorney here on the 13th, all right?

09:44:45 20 MR. FUENTES: Fine, Judge.

09:44:46 21 THE COURT: Then what I would anticipate doing on the
09:44:49 22 13th is set the trial schedule, okay?

09:44:52 23 DEFENDANT BEY: (Nodding head.)

09:44:53 24 MR. HOTALING: (Nodding head.)

09:44:54 25 THE COURT: I am getting nods for the record.

09:44:56 1 And what I would want to do is I would want to have
09:45:00 2 another Pre-Trial Conference.

09:45:02 3 DEFENDANT BEY: Okay.

09:45:04 4 THE COURT: I am not saying it is a complete clean
09:45:10 5 slate, but I do want to do things according to the way I
09:45:14 6 usually do them.

09:45:15 7 DEFENDANT BEY: I can ask you now, I have new
09:45:18 8 discovery so I can file those, right?

09:45:21 9 THE COURT: What you can do is if it is discovery,
09:45:27 10 and this is the exact kind of thing you would want to talk to
09:45:31 11 standby counsel about, because certain kinds of discovery the
09:45:37 12 defendant is obligated to turn over before a trial, for
09:45:41 13 example --

09:45:41 14 DEFENDANT BEY: I will -- that is why we are having
09:45:44 15 the hearings, right?

09:45:45 16 THE COURT: Right.

09:45:46 17 DEFENDANT BEY: Okay, okay.

09:45:48 18 THE COURT: I am saying is that certain kinds of
09:45:51 19 discovery would you have a duty to turn over before trial.

09:45:54 20 For example, if you asked the government to disclose
09:45:56 21 who their experts are going to be, and a summary of their
09:46:00 22 experts, you would have to do the same before trial.

09:46:02 23 DEFENDANT BEY: Okay.

09:46:03 24 THE COURT: There is certain evidence that -- and it
09:46:07 25 usually has to do with cross examination of witnesses that you

09:46:13 1 are entitled to hold back, just like the government is
09:46:17 2 entitled to hold back, under a particular rule of evidence,
09:46:21 3 608(b). But it's -- all I can tell you is that is the kind of
09:46:28 4 thing you would want to confer with your standby counsel on.

09:46:32 5 Okay?

09:46:32 6 DEFENDANT BEY: Okay.

09:46:33 7 THE COURT: So we will set the schedule going forward
09:46:36 8 on February 13, and if you want to get a head start, you can
09:46:43 9 look at my online site on the District Court, there is a
09:46:48 10 criminal pre-trial procedures link, and you can start reading
09:46:51 11 through that about the kinds of things you need to prepare.

09:46:55 12 All right?

09:46:55 13 DEFENDANT BEY: Okay.

09:46:56 14 THE COURT: Do you have any other questions, Mr. Bey?

09:46:59 15 DEFENDANT BEY: Not right now.

09:47:00 16 THE COURT: Anything else for the government?

09:47:01 17 MS. MALIZIA: No, Judge.

09:47:03 18 THE COURT: Mr. Fuentes?

09:47:05 19 MR. FUENTES: No, Judge.

09:47:08 20 THE COURT: Pre-trial?

09:47:09 21 PRE-TRIAL SERVICES OFFICER: No, Your Honor.

09:47:10 22 Thank you.

09:47:11 23 THE COURT: All right.

09:47:12 24 That is it for now.

09:47:13 25 Thank you.

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2 (Proceedings concluded.)

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6 C E R T I F I C A T E

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9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.

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12 /s/Krista Burgeson, CSR, RMR, CRR January 21, 2019
13 Federal Official Court Reporter Date

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